

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN LEE MCCULLOM,

Plaintiff,

v.

PATRICK WITHROW, et al.,

Defendants.

No. 2:21-cv-00378-DAD-JDP (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION DUE TO PLAINTIFF'S FAILURE
TO STATE A CLAIM, FAILURE TO
PROSECUTE, AND FAILURE TO OBEY
COURT ORDERS

(Doc. No. 9)

Plaintiff Kevin Lee McCullom is a county jail inmate proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 15, 2022, the assigned magistrate judge issued findings and recommendations recommending that this action be dismissed, without prejudice, due to plaintiff's failure to prosecute, failure to obey court orders, and failure to state a cognizable claim. (Doc. No. 9.) In particular, on July 12, 2022, the court screened plaintiff's complaint and determined that plaintiff had failed to state a cognizable claim for relief, and the court directed plaintiff to file an amended complaint and a motion to proceed *in forma pauperis*. (Doc. No. 7 at

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3.)¹ Plaintiff did not file an amended complaint or a motion to proceed *in forma pauperis*. Accordingly, on August 22, 2022, the court issued an order to plaintiff to show cause why this case should not be dismissed due to his failure to prosecute and failure to state a cognizable claim for relief. (Doc. No. 8.) Plaintiff did not respond to that order to show cause, and the service copy of that order was also returned to the court marked as “Undeliverable, Not in Custody.” The pending findings and recommendations were served on plaintiff at his address of record and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (Doc. No. 9 at 2.) To date, no objections to the findings and recommendations have been filed, and the time in which to do so has now passed.²

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and by proper analysis.

Accordingly:

1. The findings and recommendations issued on September 15, 2022 (Doc. No. 9) are adopted in full;
2. This action is dismissed, without prejudice, due to plaintiff’s failure to prosecute this action, failure to obey court orders, and failure to state a cognizable claim for relief; and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: November 23, 2022


UNITED STATES DISTRICT JUDGE

¹ The service copy of the court’s screening order was mailed to plaintiff at his address of record and was also returned to the court marked as “Undeliverable, Not in Custody.” Thus, plaintiff was required to file a notice of his change of address with the court no later than October 11, 2022. To date, plaintiff has not filed a notice of his change of address or otherwise communicated with the court.

² The service copy of the findings and recommendations, which was mailed to plaintiff at his address of record, was also returned to the court marked as “Undeliverable.”